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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,510	05/25/2005	Andrew Baxter	056291-5170	8278

9629 7590 11/06/2008

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EXAMINER	
MURRAY, JEFFREY H	
ART UNIT	PAPER NUMBER
1624	
MAIL DATE	DELIVERY MODE
11/06/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/501,510	BAXTER ET AL.	
	Examiner	Art Unit	
	JEFFREY H. MURRAY	1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 July 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) *7, 9 and 11-15* is/are withdrawn from consideration.

5)☐ Claim(s) _ is/are allowed.

6)☒ Claim(s) *1-6, 8 and 10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/15/2004 & 10/13/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. This action is in response to an election from a restriction requirement filed on July 23, 2008. There are fifteen claims pending and eight claims under consideration. Claims 7, 9, and 11-15 have been withdrawn. This is the first action on the merits. The present invention relates to a sulphonamide compound, processes and intermediates used in preparation, pharmaceutical compositions containing them and their use in therapy.

2. Applicant's election with traverse of in the reply filed on July 23, 2008 is acknowledged. The traversal is on the ground(s) that the restriction is unclear. Examiner agrees the restriction is ambiguous. To clear up and of the confusion, examiner is rejoining groups I-VII. Applicants' arguments are now moot. The requirement is deemed proper and is made **FINAL**.

Specification

3. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) TITLE OF THE INVENTION.
(b) CROSS-REFERENCE TO RELATED APPLICATIONS.
(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
(d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.

(e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
(f) BACKGROUND OF THE INVENTION.
(1) Field of the Invention.
(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
(g) BRIEF SUMMARY OF THE INVENTION.
(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
(i) DETAILED DESCRIPTION OF THE INVENTION.
(j) CLAIM OR CLAIMS (commencing on a separate sheet).
(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any of the errors of which applicant may become aware of in the specification. Introduction of New Matter must be avoided.

Claim Objections

5. Applicant is advised that should claim 1 be found allowable, claim 10 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

The recitation of an intended use, chemical activity, or functional description of some "additional" property for a compound (or moiety/functionality attached to a chemical core) or a composition containing same in a dependent claim, must result in a tangible

structural difference between the product and of the independent claim and the product set forth in the dependent claim. In the absence of said structural difference between the product of the independent claim and that of the dependent claim, said dependent claim is seen to be a substantial duplicate, and said recitation is not afforded critical weight and fails to further limit the product in said dependent claim. In the instant set of claims, claim 10 fail to further limit claim 1 to a compound from which they depend. They merely state an intended use of the compound, that as a use in therapy. This part of the claim is given no patentable weight as it merely describes an "intended use" or a "functional description." No new matter. Appropriate correction is required.

6. Claims 4 and 5 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 4 and 5 not been further treated on the merits.

Claim Rejections - 35 USC § 112, 1st paragraph

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1-6, 8 and 10 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a 2-pyrazinyl benzenesulphonamide compound where R^1, R^2, and R^3 are halogen, alkyl or cyano and R^4 is halogen, alkoxy, or a carboxylic ester, does not reasonably provide enablement for all of the other R groups listed nor any solvates within the broad Claim 1. The specification does not

enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

The test of enablement is whether one skilled in the art could make and use the claimed invention from the disclosures in the application coupled with information known in the art without undue experimentation. (United States v. Teletronics Inc., 8 USPQ2d 1217 (Fed. Cir. 1988)). Whether undue experimentation is needed is not based on a single factor, but rather a conclusion reached by weighing many factors (See Ex parte Forman 230 USPQ 546 (Bd. Pat. App. & Inter. 1986) and In re Wands, 8 USPQ2d 1400 (Fed. Cir. 1988).

These factors include the following:

1) *Amount of guidance provided by Applicant.* The Applicant has demonstrated within the application how to make 2-pyrazinyl benzenesulphonamide compounds. However, there is no working example of any compounds with R groups other than previously mentioned nor has applicant demonstrated any solvates. These cannot be simply willed into existence. As was stated in *Morton International Inc. v. Cardinal Chemical Co.*, 28 USPQ2d 1190 "The specification purports to teach, with over fifty examples, the preparation of the claimed compounds with the required connectivity. However...there is no evidence that such compounds exist...the examples of the '881 patent do not produce the postulated compounds...there is...no evidence that such compounds even exist." The same circumstance appears to be true here. There is no evidence that solvates of these compounds actually exist; if they did, they would have

formed. Hence, applicants must show that solvates can be made, or limit the claims accordingly.

2) *Unpredictability in the art.* It is well established that "the scope of enablement varies inversely with the degree of unpredictability of the factors involved" and physiological activity is generally considered to be an unpredictable factor. (USPQ 18, 24 (CCPA 1970). See *In re Fisher*, 427 F.2d 833, 839, 166.

Chemistry is unpredictable. See In Re Marzocchi and Horton 169 USPQ at 367 paragraph 3:

> "Most non-chemists would probably be horrified if they were to learn how many attempted syntheses fail, and how inefficient research chemists are. The ratio of successful to unsuccessful chemical experiments in a normal research laboratory is far below unity, and synthetic research chemists, in the same way as most scientists, spend most of their time working out what went wrong, and why. Despite the many pitfalls lurking in organic synthesis, most organic chemistry textbooks and research articles do give the impression that organic reactions just proceed smoothly and that the total synthesis of complex natural products, for instance, is maybe a labor-intensive but otherwise undemanding task. In fact, most syntheses of structurally complex natural products are the result of several years of hard work by a team of chemists, with almost every step requiring careful optimization. The final synthesis usually looks quite different from that originally planned, because of unexpected difficulties encountered in the initially chosen synthetic sequence. Only the seasoned practitioner who has experienced for himself the many failures and frustrations which the development (sometimes even the repetition) of a synthesis usually implies will be able to appraise such work .....Chemists tend not to publish negative results, because these are, as opposed to positive results, never definite (and far too copious)." Dorwald F. A. *Side Reactions in Organic Synthesis*, 2005, Wiley: VCH, Weinheim pg. IX of Preface.

The scope of "solvate" is not adequately enabled or defined. Applicants provide no guidance as how the compounds are made more active *in vivo*. Solvates cannot be predicted and there fore are not capable of being claimed if the applicant cannot

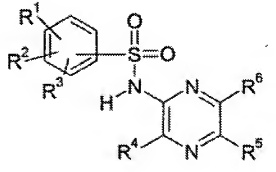
properly enable a particular solvate.

> "Predicting the formation of solvates or hydrates of a compound and the number of molecules of water or solvent incorporated into the crystal lattice of a compound is complex and difficult. Each solid compound responds uniquely to the possible formation of solvates or hydrates and hence generalizations cannot be made for a series of related compounds. Certain molecular shapes and features favor the formation of crystals without solvent; these compounds tend to be stabilized by efficient packing of molecules in the crystal lattice, whereas other crystal forms are more stable in the presence of water and/or solvents. There may be too many possibilities so that no computer programs are currently available for predicting the crystal structures of hydrates and solvates. Vippagunta et. al. Advanced Drug Delivery Reviews 48 (2001) 3-26.

3) *Number of working examples.* The compound core depicted with specific substituents represents a narrow subgenus for which applicant has provided sufficient guidance to make and use; however, this disclosure is not sufficient to allow extrapolation of the limited examples to enable the scope of the compounds instantly claimed or preventive agents. Applicant has provided no working examples of any compounds, compositions or pharmaceutically acceptable salts where the R variables were not those mentioned above in the present application.

Within the specification, "specific operative embodiments or examples of the invention must be set forth. Examples and description should be of sufficient scope as to justify the scope of the claims. *Markush* claims must be provided with support in the disclosure for each member of the *Markush* group. Where the constitution and formula of a chemical compound is stated only as a probability or speculation, the disclosure is not sufficient to support claims identifying the compound by such composition or formula." See MPEP 608.01(p).

4) *Scope of the claims*. The scope of the claims involves all of the thousands of compounds of the following formula:



thus, the scope of claims is very broad.

5) *Nature of the invention*. The nature of this invention relates generally to sulphonamide compound, processes and intermediates used in preparation, pharmaceutical compositions containing them and their use in therapy.

6) *Level of skill in the art*. The artisan using Applicants invention would be a chemist with a Ph.D. degree, and having several years of bench experience.

MPEP §2164.01 (a) states, "A conclusion of lack of enablement means that, based on the evidence regarding each of the above factors, the specification, at the time the application was filed, would not have taught one skilled in the art how to make and/or use the full scope of the claimed invention without undue experimentation. *In re Wright*, 999 F.2d 1557,1562, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993)." That conclusion is clearly justified here that Applicant is not enabled for making these compounds or compositions or treating the diseases mentioned.

Claim Rejections - 35 USC § 112, 2nd paragraph

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-5, 8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. The scope of "5- to 7-membered heteroaromatic ring" or "4- to 8-membered saturated ring containing 1-3 heteroatoms" requires clarification since applicants' examples in the specification are not limited to the examples defined. See definitions on p.4 and 5 of the specification. Where applicants define terms with a special meaning, they must set out the special definition with "reasonable clarity, deliberateness and precision". Note *Teleflex v. Ficosa*, 63 USPQ2d 1374; Rexnord Corp v. Laitram Corp. 60 USPQ2d 1851 and MPEP 2111.01.

Applicants have not defined these terms with reasonable clarity. The terms are defined with non-limiting examples making them impossible to pin down. For example, when one states C_1-C_4 alkyl, there are a small finite number of possibilities that exist in that set. One ordinarily skilled in the art realizes and understands this. However when one states, "5- to 7-membered heteroaromatic ring" then provides a non-limiting list of examples, how can this be considered definite? One skilled in the art could instantly envision well over one hundred 100 ring systems that qualify under this broad, vague definition. Does the applicant wish to claim a thiophene or a triazine? Applicant must narrow such broad terminology by either eliminating such a broad definition or by inserting the specific ring systems they wish to cover into the claim themselves. The rejection is maintained. No new matter permitted. Appropriate correction is required.

12. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 discusses three R groups, yet defines then in an "either/or" fashion, insinuating only 2 groups. Examiner recommends changing the text to, "...in which one of the R^1, R^2, and R^3 is hydrogen and the other *two R groups are* chloro, bromo, or methyl." (emphasis added) No new matter permitted. Appropriate correction is necessary.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

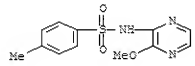
14. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

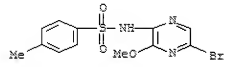
15. Claims 1-6, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esche, J. et al., in view of *In re Hass*, and *In re Henze*.

The present invention relates generally to 2-pyrazinyl benzenesulphonamide compounds. Esche et. al. teaches compounds having he following structures:

RN 5900-66-3 CAPLUS
CN p-Toluenesulfonamide, N-(3-methoxypyrazinyl)- (7CI, 8CI) (CA INDEX NAME)

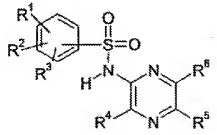


RN 5900-67-4 CAPLUS
CN p-Toluenesulfonamide, N-(5-bromo-3-methoxypyrazinyl)- (7CI, 8CI) (CA INDEX NAME)



RN 7621-02-5 CAPLUS
CN Sulfanilamide, 3,5-dibromo-N1-(3,5-dimethoxypyrazinyl)- (7CI, 8CI) (CA INDEX NAME)

The current application teaches a compound of the following structure:



The above stated prior art compound is identical to a compound of the current application but for one aspect. The above compound reads on the claims of the current

application but for one issue. Claim 1 of the current application provides a proviso that does not permit R^5 to be hydrogen or bromo if one of R^1, R^2, and R^3 is a methyl group and the other two are hydrogen, and the methyl group is para to the sulfonamide group.

The CCPA has defined a homologous series as a family of chemically related compounds, the composition of which varies from member to member by a $-CH_2$ (one atom of carbon and two hydrogen). In re Coes, Jr. (CCPA 1949) 173 F2d 1012, 81 USPQ 369. The Court of Appeals for the District of Columbia applied a broader definition and defined a homolog (homologue) as a member of a series of compounds in which each member differs from the next member by a constant number of atoms. Carr. Pats.v. Deutsche Gold-und-Sllber, etc. (CADC 1968) 397 F2d 656,157 USPQ 549.

The "Hass-Henze Doctrine" evolved from three CCPA cases, viz., *In re Hass et al.* (CCPA 1944) 141 F2d 122 and 127, 60 USPQ 544 and 548; and *In re Henze* (CCPA 1950) 181 F2d 198, 85 USPQ 261. In the *Henze* decision, the Court said:

> "The nature of homologues and the close relationship the physical and chemical properties of one member of a series bears to adjacent members is such that a presumption of unpatentability arises against a claim directed to a composition of matter, the adjacent homologue of which is old in the art. The burden is on the applicant to rebut that presumption by a showing that the claimed compound possesses unobvious or unexpected beneficial properties not actually possessed by the prior art homologue. It is immaterial that the prior art homologue may not be recognized or known to be useful for the same purpose or to possess the same properties as the claimed compound. The CCPA concluded that because the characteristics normally possessed by members of a homologous series are principally the same, varying gradually from member to member, chemists knowing the properties of one member of a series would in general know what to expect in adjacent members so that a mere difference in degree is not the marked superiority which will ordinarily remove the unpatentability of adjacent homologues of old substances. Contra, where no use for the prior art compound is known. *In m Stemniski* (CCPA 1971) 444 F2d 581, 170 USPQ 343, and cases cited

> therein. Whether a compound is patentable over a prior art homologue or isomer is a question to be decided in each case. *In re Hass et* al., *supra."*

The 'Hass-Henze Doctrine" stands for the proposition that, "If that which appears at first blush to be obvious though new is shown by evidence not to be obvious then the evidence prevails over surmise or unsupported contention and rejection based on obviousness must fail." In re *Papesch* (CCPA 1963) 315 F2d 381, 137 USPQ 43, 48. The presumption that homologues are unpatentably obvious is an inference of fact, viz., that adjacent homologs are expected to have similar properties which places a 'burden of persuasion' on the applicant who asserted a contrary fact. In *re Mills* (CCPA 1960) 281 F2d 218, 126 USPQ 513.

Here, there is nothing in the chemical arts to suggest that this methyl group is critical to the steps involved in the method of preparing the compound. Looking at the two compounds we see that a compound which contains an "ethyl" group in replacement of the "methyl" group would not be read on by the proviso The instantly claimed compound could easily differ from the reference compound by only a $-CH_2-$ group. It would have been obvious to one having ordinary skill in the art at the time of the invention to attempt the method of the patent reference on a modified version of the compound in the prior art to prepare a structural homolog which corresponds to the compound of the current application. There is no teaching or suggestion that the methyl group located para to the sulfonamide group as opposed to an ethyl group in this same position would be critical to the method of preparing the final compound using the same procedure as the prior art.

One having ordinary skill in the art would have been motivated to prepare the instantly claimed compound using an ethyl in replacement of a methyl group because the methyl group is not critical to the synthesis of the final compound and such structurally homologous compounds are expected to possess similar properties. It has been held that compounds that are structurally homologous to prior art compounds are *prima facie* obvious, absent a showing of unexpected results. *In re Hass*, 60 USPQ 544 (CCPA 1944); *In re Henze*, 85 USPQ 261 (CCPA 1950).

Double Patenting

16. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

17. Claims 1-6, 8 and 10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent Application Publication No. 2006/0122195. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 1 of U.S. Patent Application Publication No. 2006/0122195 embraces the instant claims 1-6, 8 and 10.

The instant claim differs from the copending claim by a more limited genus than the claim of the copending application. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to select any of the species of the genus of the copending application, including those instantly claimed, because the skilled chemist would have the reasonable expectation that any of the species of the genus would have similar properties and, thus, the same use as taught for the genus as a whole. One of ordinary skill in the art would have been motivated to select the claimed compounds from the genus of the copending application since such compounds would

have been suggested by the claims of the copending application. It has been held that a prior art disclosed genus of useful compounds is sufficient to render prima facie obvious a species falling within a genus. *In re Susi*, 440 F.2d 442, 169 USPQ 423, 425 (CCPA 1971), followed by the Federal Circuit in *Merck & Co. v. Biocraft Laboratories*, 847 F.2d 804, 10 USPQ 2d 1843, 1846 (Fed. Cir. 1989).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

18. Claims 1-6, 8 and 10 are rejected.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey H. Murray whose telephone number is 571-272-9023. The examiner can normally be reached on Mon.-Thurs. 7:30-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisors, James O. Wilson can be reached at 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey H Murray/
Examiner, Art Unit 1624

/James O. Wilson/
Supervisory Patent Examiner, Art Unit 1624